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TO RUEHC/SECSTATE WASHDC PRIORITY 6123

INFO RUEHXC/ALL US CONSULATES IN MEXICO COLLECTIVE PRIORITY

RUEATRS/DEPT OF TREASURY WASHINGTON DC

RUCPDOC/DEPT OF COMMERCE WASHINGTON DC

RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC

RHMFIUU/DEPT OF JUSTICE WASHINGTON DC

RHMFIUU/CDR USNORTHCOM PETERSON AFB CO

RHMFISS/CDR USSOUTHCOM MIAMI FL

RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC

UNCLAS SECTION 01 OF 03 MEXICO 001081

SENSITIVE, SIPDIS

STATE FOR EB/TPP/MTA/IPE/KEAT/URBAN

STATE FOR WHA/MEX/WOLFSON

STATE PASS TO USTR FOR MELLE/MCCOY/SHIGETOMI/VETERE

STATE PASS TO JUSTICE FOR CCIPS/MERRIAM,KOUAME AND

OPDAT/TRUEBELL AND RAMOS

STATE PASS TO COMMERCE FOR ITA/MAC/ONAFTA/WORD

STATE PASS TO COMMERCE FOR ITA/MAC/IPR/WILSON,BOGER

COMMERCE PASS TO USPTO FOR RODRIGUEZ/BERDUT/MORALES

E.O. 12958: N/A

TAGS: [KIPR](#) [ECON](#) [ETRD](#) [MX](#)

SUBJECT: IP VIOLATORS AND MEXICO'S COMPLICATED PARDONER'S TALE

Summary

¶11. (SBU) Summary: PGR has expressed its frustration over the recent pardons by two rightholders of IP violators. At first glance, its concern is valid - if PGR is to bring IP violators to justice, it needs the support of the rightholder. However, although the first rightholder recanted and went through with the complaint, the case was dismissed on a technicality. In the case of the second rightholder, the pardon may have been forged, suggesting a high level of sophistication on the part of the criminal gangs that control the pirated and counterfeit goods network. The more we learn of the circumstances surrounding these pardons, the greater we see the need for a comprehensive strategy to address PGR's - and the rightholders' - disquiet. End Summary.

¶12. (SBU) Both PGR and the rightholders bear a heavy responsibility in curbing IP violations in Mexico. PGR is responsible for enforcing the law and bringing violators to justice, but cannot do so without the willingness of the rightholder to see the case through to the bitter end. It is of great consternation to PGR when a rightholder, after filing a complaint and at times following years of work by PGR in preparing a case, decides to drop the charges against a patent, trademark or copyright infringer and requests a pardon. PGR, under pressure from both the Calderon administration and the USG for more arrests, more prosecutions, and more convictions of IP violators, is left in a very frustrating position.

Nike

¶13. (SBU) So it should come as no surprise that on March 25, when the local representative for Nike met with PGR's senior IP Unit leadership to inform them that Nike was considering dropping the charges against Leonardo Cruz Hernandez, PGR was extremely displeased. Cruz was arrested on March 23 by Mexican authorities for IPR violations, after a 3-year investigation. Following his arrest, Nike Mexico's General Manager received enormous pressure from Nike's wholesalers to pardon Cruz, including from a brother of a senior PRI politician. The decision to consider dropping the charges was made on March 24 in a telcon between Nike Mexico and Nike

corporate headquarters in Portland. The conditions for the possible pardon included community service, auditing of Cruz's financial records, and cooperation with PGR in its reconversion program. No financial remuneration was included in the pardon.

¶4. (SBU) PGR's IP team reached out to ECONOFF, ICE Attach and the DOJ, to inform us of Nike's decision and to ensure that Nike corporate headquarters was aware. That same day, Nike Mexico met again with PGR to let them know that Nike had decided to go ahead and allow the case to proceed. PGR was pleased. However, on March 26, the judge of the 11th Federal Court of the Recusorio Oriente, where Cruz was being held, dismissed the charges against him and allowed Cruz to go free. The judge's clerk found fault with the paperwork in which PGR outlined the case against him, and the case was dismissed on a technicality.

MPAA

¶5. (SBU) In a meeting with a senior IP official at PGR on Friday, April 3, the official voiced his frustration to ECONOFF and ICE Attach with the attorneys who represent U.S. rightholders. He said he felt like he was fighting two fronts - the pirates and the attorneys. He mentioned another case, in which the local legal representative for MPAA pardoned six persons arrested following a major sweep in Veracruz for the production and distribution of pirated DVD's. ECONOFF had previously been told by a contact at the MPAA Washington office that their lead local investigator had received

MEXICO 00001081 002 OF 003

personal threats, including an envelope hand-delivered to his residence containing a note card with the letter 'Z' emblazoned on it - indicating the notorious 'Los Zetas' criminal gang - and a bullet. The PGR official argued that the envelope did not surface until after the local MPAA representatives had acted to dismiss the case. He was also dismissive of the envelope, remarking that he was not entirely convinced it was real, and that even if it was credible, in this line of work "you have to be used to such threats."

¶6. (SBU) On Tuesday, April 7, ECONOFF met with the Managing Director of MPA Mexico, to collect MPAA's story. He said the raid on Coatzacoalcos, Veracruz, occurred in early March, and was a military raid in which guns and drugs were seized along with over a million pirated and blank CD's and DVD's. (NOTE: The March 5 IFPI press release reports that Mexican law-enforcement and military personnel raided a domicile in Veracruz, Mexico that was utilized as a major replicating center for 'Los Zetas.' Seized in this raid were: 350,500 music CDRs, 300,360 film DVDRs, 1,800 Burners, 30,000 blank DVDRs, and 380,000 film and music inlay cards. A total of seven individuals were arrested in the raid. There was no mention of arms or drugs. END NOTE.)

¶7. (SBU) Following this raid, the PGR IP Unit contacted MPA Mexico and requested that they file a complaint. (NOTE: Under the Mexican system, the Mexican authorities lack ex-officio authority, and can act only upon receiving a complaint from the right-holder. END NOTE.) MPA Mexico did so, and the authorities charged the six arrested with IP violations. In mid-March, MPA Mexico discovered that the case had been dismissed, and the six arrested had gone free based on a pardon from MPA Mexico. MPA Mexico obtained a copy of the judicial pardon from Veracruz, which had allegedly been signed by their legal representative. However, the legal representative swore that he had never made such a pardon, that he was not in Veracruz on the date of the pardon, and that he had not signed such a document. It was when he was ready to go to Veracruz in an attempt to refute the pardon and clear his name that he received a text message on his cell, signed 'Z', threatening him, and the envelope (described above) appeared on the investigator's doorstep.

¶8. (SBU) Since then, MPA Mexico's lead investigator left Mexico for Peru on Friday, March 27 for a possible extended stay. The legal representative who allegedly signed the pardon was dismissed (amicably), and another has resigned out of fear. This incident has effectively eviscerated MPA Mexico's enforcement activities. On Friday, April 6, PGR asked MPA Mexico if they would file a complaint against the alleged boss of the six pardoned individuals - presumably the seventh person arrested in the Veracruz sweep. MPA Mexico's Managing Director told ECONOFF they are mulling over their options.

Comment

¶9. (SBU) Comment: The possibility of a forged pardon and the subsequent threats reflect a high level of sophistication on the part of the Zetas. If true, PGR should launch an investigation of these events, and perhaps determine to what extent the judicial system in Veracruz is complicit. More importantly, rightholders must feel assured that when they bring charges against IP violators, they will be protected by the Mexican authorities and any threats against them will not be summarily dismissed.

¶10. (SBU) It is understandable that rightholders feel discouraged by sometimes awaiting justice for years as PGR prepares a case, only to have it dismissed on a technicality or perhaps even based on a judicial lack of understanding. On the other hand, as the first case demonstrates, PGR must be assured that it has the complete and consistent support of the rightholder when pursuing a case. The Departments of Commerce and Justice have compiled some suggested courses of action,

MEXICO 00001081 003 OF 003

recommending that U.S. rightholders review their agreements with local legal representatives and ensure that cases cannot be settled without the express consent of the U.S. rightholder, and providing PGR with rightholders' local and U.S. headquarters points of contact.

¶11. (SBU) The more we learn of the circumstances surrounding these pardons, the greater we see the need for a comprehensive strategy to address PGR's - and the rightholders' - concerns. This is an opportunity to push for Mexican legislative approval of ex-officio authority, which would not only remove the ability of rightholders to request pardons, it would reduce the possibility of harm befalling them as they would no longer be responsible for bringing charges against IP violators. We should also develop stronger training programs with PGR and Mexico's judicial officials, enhancing the authorities' abilities to investigate, prepare, and present IP cases as well as adjudicate them in a fair, timely, and effective manner. End comment.

BASSETT